

## Message Text

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FROM LOS DEL

DEPT POUCH ALL DIPOMATIC POSTS

H. COUNCIL VOTING

THE MOST IMPORTANT ISSUE WHICH WAS NOT RESOLVED CONCERNS THE COMPOSITION AND VOTING SYSTEM IN THE COUNCIL. THE U.S. AND OTHER DEVELOPED COUNTRIES CLEARLY STATED THAT THEY COULD NOT ACCEPT THE SYSTEM PROVIDED FOR IN THE SNT OF MARCH 1975. THE U.S. IN DECEMBER 1975 PROPOSED AMENDMENTS WHICH WOULD STRENGTHEN THIS ARTICLE FROM OUR POINT OF VIEW. HOWEVER, OUR REPRESENTATIVES HAVE MADE CLEAR THAT WE ARE NOT SATISFIED WITH OUR OWN AMENDMENTS TO THE SNT, AND HAVE SAID THAT WE WOULD PROPOSE A NEW ARTICLE AT THE NEXT SESSION. IN LIGHT OF THIS, CHAIRMEN ENGO DID NOT HOLD CONSULTATIONS ON THIS EXTREMELY IMPORTANT ISSUE. THE SNT CONTAINS THE TEXT OF THE GENEVA SNT BUT THERE IS A CLEAR UNDERSTANDING THAT THIS ISSUE WOULD BE DISCUSSED AND NEGOTIATED.  
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TIATED AT THE NEXT SESSION.

#### I. QUOTA SYSTEM OR ANTI-MONOPLY ARTICLE

SEVERAL INDUSTRIALIZED COUNTRIES PRESSED VIGOROUSLY FOR A LIMIT ON THE NUMBER OF MINES SITES OR CONTRACTS WHICH ANY ONE STATE OR ITS NATIONALS COULD OBTAIN FROM THE AUTHORITY AT ANY GIVEN TIME. THIS VIEW WAS RESISTED WITH EQUAL VIGOR BY THE UNITED STATES, WHICH EXPLAINED THAT THERE ARE SEVERAL HUNDRED PRIME MINE SITES AND THOUSANDS MORE OF GOOD QUALITY FOR THE FUTURE, THIS ISSUE REMAINS AS ONE OF THE MOST DIFFICULT IN THE NEGOTIATIONS AHEAD. THE DEVELOPING COUNTRIES SIDESTEPPED THIS ISSUE RATHER THAN TAKE SIDES IN A DISPUTE AMONG AND BETWEEN DEVELOPED COUNTRIES.

#### J. SECRETARY'S STATEMENT

DURING THIS SESSION OF THE CONFERENCE, SECRETARY KISSINGER MADE A STATEMENT (APRIL 8 BEFORE THE FOREIGN POLICY ASSOCIATION) IN WHICH HE OUTLINED THE MAJOR REMAINING ISSUES THAT HAD TO BE RESOLVED IN THE LOS NEGOTIATIONS, CITING SPECIFICALLY THE DIFFICULT PROBLEMS IN COMMITTEE I. SECRETARY KISSINGER OUTLINED THE COMPROMISE PACKAGE PROPOSAL AS AN EFFORT TO BRIDGE DIFFERENCES IN THE NEGOTIATIONS. THIS SPEECH WAS WIDELY REGARDED AS AN IMPORTANT CONTRIBUTION TO ACHIEVING AN ATMOSPHERE OF ACCOMMODATION.

#### III. COMMITTEE II

TERRITORIAL SEAS, STRAITS, THE ECONOMIC ZONE, THE CONTINENTAL SHELF, HIGHSEAS, ARCHIPELAGOES, LAND-LOCKED STATES, ISLANDS, AND ENCLOSED AND SEMI-ENCLOSED SEAS.

#### SUMMARY

THE WORK OF COMMITTEE II WAS ORGANIZED TO DISCUSS IN FORMAL WORKING SESSION OF THE FULL COMMITTEE ALL ISSUES IN THE INFORMAL SINGLE NEGOTIATING TEXT ISSUED AT THE END OF THE LAST  
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SESSION IN GENEVA. THE DISCUSSION PROCEEDED ON AN ARTICLE-BY-ARTICLE BASIS. IN AN ATTEMPT TO EXPEDITE THE WORK, A RULE WAS ADOPTED WHEREBY SILENCE ON THE PART OF ANY DELEGATION WOULD BE INTERPRETED AS INDICATING SUPPORT FOR THE GENEVA

SINGLE NEGOTIATING TEXT (SNT) AND OPPOSITION TO ANY AMENDMENTS PROPOSED. WHILE SMALL GROUP C CONSULTATIONS WERE POSSIBLE, AND DID IN FACT TAKE PLACE (TUNA, LAND-LOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES), THE COMMITTEE WORKING SESSIONS EACH DAY LEFT LITTLE TIME FOR SUCH CONSULTATIONS. AFTER SIX-AND-ONE-HALF WEEKS OF INTENSIVE WORK, THE CONSIDERATION OF ALL COMMITTEE II ARTICLES WAS COMPLETED, AND THE CHAIRMAN COMMENCED THE PREPARATION OF A REVISED TEXT. THE CLEAR OVERALL IMPRESSION OF THE DEBATE WAS THAT PART II OF THE GENEVA SINGLE NEGOTIATING TEXT WAS BROADLY ACCEPTABLE.

THE MAJOR CONTENTIOUS ISSUES IN COMMITTEE II DATED BY THE FOURTH SESSION WERE:

1. THE JURIDICAL STATUS OF THE ECONOMIC ZONE AS HIGH SEAS, AND
2. THE ACCESS TO THE SEA BY LAND-LOCKED STATES, AND THE ACCESS TO THE RESOURCES IN THE ECONOMIC ZONES OF STATES OF A REGION BY SUCH STATES AND GEOGRAPHICALLY DISADVANTAGES STATES OF THE REGION.

OTHER IMPORTANT ISSUES ON WHICH THERE WAS SIGNIFICANT DIVISION WERE:

1. DELIMITATION OF ECONOMIC ZONE AND CONTINENTAL SHELF BOUNDARIES BETWEEN OPPOSITE AND ADJACENT STATES INCLUDING THE QUESTION OF ISLANDS;
  2. THE QUESTION OF COASTAL STATE AUTHORITY OVER CONSTRUCTION, DESIGN, EQUIPMENT AND MANNING STANDARDS FOR FOREIGN VESSELS IN THE TERRITORIAL SEAS WHICH IS RELATED TO THE COMMITTEE III POLLUTION NEGOTIATIONS.
  3. HIGHLY MIGRATORY SPECIES
  4. RESOURCE RIGHTS FOR TERRITORIES UNDER
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FOREIGN OCCUPATION OR COLONIAL DOMINATION.

IT WILL ALSO BE NECESSARY TO DO FURTHER WORK WITH REGARD TO THE CONTINENTAL SHELF BEYOND 200 MILES, ALTHOUGH THE BASIC FRAMEWORK OF A SOLUTION SEEMS TO BE APPARENT AT THIS POINT: A PRECISE DEFINITION OF THE OUTER LIMIT COMBINED WITH REVENUE WHARING BEYOND 200 MILES.

IT IS CLEAR THAT DELEGATIONS NOW HAVE A BETTER GRASP OF THE OVERALL COMMITTEE II PACKAGE, THOUGH A NUMBER OF ISSUES ARE STILL OUTSTANDING.

B. REVIEW OF BASIC ARTICLES:

1. TERRITORIAL SEAS

THERE WAS CONTINUED BROAD SUPPORT WITHIN THE COMMITTEE FOR A 12-MILE TERRITORIAL SEA AS A PART OF AN OVERALL, WIDELY ACCEPTED PACKAGE. SOME COASTAL STATES CONTINUED, HOWEVER, TO PRESS FOR 200 MILES, OR RESERVED POSITIONS ON BREADTH PENDING CLEARIFICATION OF COASTAL STATES' RIGHTS IN THE EXCLUSIVE ECONOMIC ZONE. NEITHER PROPOSALS FOR 200-MILES TERRITORIAL SEAS, NOR THOSE FOR EXTENSIVE HISTORIC WATERS RECEIVED MUCH SUPPORT. PROVISIONS ON BASELINES RECEIVED GENERAL APPROVAL WITH MINOR EXCEPTIONS. IN THE DISCUSSION OF DELIMITATION BETWEEN OPPOSITE OR ADJACENT STATES THE DISTINCTION SURFACED, WHICH APPEARED LATER AS WELL, BETWEEN THE USE OF EQUITY AND QUIDISTANCE AS THE PROPER CRITERION.

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FROM LOSDEL

MARINE MAMMALS.

#### 8. LAND-LOCKED STATES ACCESS TO THE SEA

THE LAND-LOCKED STATES OPENED DEBATE ON THIS SUBJECT CALLING FOR THE RIGHT OF TRANSIT THROUGH THE TERRITORIES OF TRANSIT STATES FOR THE PURPOSE OF ACCESS TO THE SEA, SUBJECT TO TERMS AND CONDITIONS TO BE SET BY AGREEMENT. SUCH PROPOSALS WERE MET BY STRONG OPPOSITION FROM COASTAL "TRANSIT" STATES SEEKING A MORE LIMITED VERSION, SUGGESTING THAT THE PRINCIPLE OF RECIPROCITY SHOULD IN ALL CASES APPLY.

#### 9. ARCHIPELAGIC STATES

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THERE WAS LITTLE SUPPORT FOR CHANGES IN THE GENEVA SINGLE NEGOTIATING TEXT. ATTEMPTS TO ALTER THE SIZE OF THE ENVELOPE ENCLOSING AN ARCHIPELAGO, ALONG WITH THOSE DESIGNED TO EXTEND THE CONCEPT BY CHANGING THE LAND-WATER RATIO, RECEIVED LITTLE SUPPORT. DEBATE CENTERED UPON THE LENGTH OF PERMISSIBLE ARCHIPELAGIC BASELINES WITH GENERAL SUPPORT FOR LIMITS SET FORTH IN THE TEXT WITH A SMALL NUMBER OF EXCEPTIONS PERMITTED. SEVERAL STATES PRESSED FOR EXTENSION OF THE ARCHIPELAGO CONCEPT TO ARCHIPELAGOS OF CONTINENTAL STATES, BUT ATTRACTED LITTLE SUPPORT.

#### 10. ISLANDS

THIS ARTICLE WAS GENERALLY ACCEPTABLE TO THE COMMITTEE. THE GENEVA SINGLE NEGOTIATING TEXT PROVIDES THAT ROCKS WHICH CANNOT SUSTAIN HUMAN HABITATION OR ECONOMIC LIFE OF THEIR OWN SHALL NOT HAVE AN ECONOMIC ZONE OR CONTINENTAL SHELF. A PROPOSAL TO DELETE THIS REFERENCE DREW STRONG, BUT NOT MAJORITY, SUPPORT.

#### 11. ENCLOSED AND SEMI-ENCLOSED SEAS

THE TEXT OF THESE ARTICLES PROVIDING FOR STATES BORDERING ON ENCLOSED OR SEMI-ENCLOSED

SEAS TO COOPERATE IN MEETING COMMON PROBLEMS  
SEEMED GENERALLY ACCEPTABLE TO MOST STATES  
PROVIDED THAT THE DUTY WAS NOT STRENGTHENED AND PERHAPS WEAKEN  
A BIT. PROPOSALS IN THIS AREA TENDED TO BE ATTEMPTS TO ADJUST  
THE TEXTS TO DEAL WITH LIMITED, SPECIAL SITUATIONS,  
AND THESE SUGGESTIONS RECEIVED ONLY LIMITED  
REGIONAL SUPPORT.

## 12. TERRITORIES UNDER FOREIGN OCCUPATION OR COLONIAL DOMINATION

ARTICLE 136 OF THE GENEVA SINGLE NEGOTIATING  
TEXT WOULD MAKE SPECIAL PROVISION FOR EXERCISE  
OF RESOURCE RIGHTS IN CERTAIN CATEGORIES OF  
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NON-SELF GOVERNING TERRITORIES. DISCUSSION  
OF THIS ARTICLE TENDED TO BE HIGHLY POLITICIZED  
AND THERE WAS CONSIDERABLE SUPPORT ON THE ONE HAND  
FOR REVISING THE TEXT TO MAKE IT LESS  
DISCRIMINATORY (I.E. INCLUSION OF REFERENCE TO  
ASSOCIATED STATES) AND FOR EXTENDING IT TO  
INCLUDE LIBERATION MOVEMENTS ON THE OTHER. THERE  
WAS ALSO SOME RECOGNITION THAT THE ISSUES INVOLVED  
CANNOT BE RESOLVED IN THE LAW OF THE SEA FORUM.  
SEVERAL COMPROMISE PROPOSALS WERE SUGGESTED FOR  
THE CHAIRMAN'S CONSIDERATION.

## 13. LANDLOCKED STATES ACCESS TO MARINE RESOURCES

MINISTER JENS EVENSEN OF NORWAY CONVENED  
A GROUP OF INTERESTED STATES DURING THE SESSION  
TO ATTEMPT TO FIND AN ACCEPTABLE FORMULA FOR  
ARTICLES 57, 58 AND 59 DEALING WITH ACCESS OF  
LAND-LOCKED AND GEOGRAPHICALLY DISADVANTAGED  
STATES TO THE LIVING RESOURCES OF THE ECONOMIC  
ZONES OF COASTAL STATES OF THEIR REGION. A TEXT  
WAS PRODUCED FOR SUBMISSION TO THE CHAIRMAN, BUT  
SIGNIFICANT DISAGREEMENT ON THE ISSUES REMAINS.

## IV. COMMITTEE III - POLLUTION AND SCIENTIFIC RESEARCH

### A. PROTECTION OF THE MARINE ENVIRONMENT

OBJECTIVES IN THIS PART OF THE LOS NEGOTIATIONS  
HAVE BEEN TO ESTABLISH EFFECTIVE ENVIRONMENTAL  
PROTECTION OBLIGATIONS WITH REGARD TO ALL SOURCES OF  
MARINE POLLUTION. IN GENERAL, THIS WOULD INCLUDE  
STANDARD-SETTING AND ENFORCEMENT RIGHTS FOR EACH  
SOURCE AND, WITH EXCEPTION OF LAND-BASED POLLUTION,  
TO REQUIRE THAT DOMESTIC REGULATIONS BE AT LEAST AS

EFFECTIVE AS INTERNATIONAL REGULATIONS. IN ADDITION,  
MUCH EFFORT WAS DEVOTED TO FINDING A SETTLEMENT ON VESSEL-  
SOURCE POLLUTION WHICH WOULD ENSURE EFFECTIVE ENFORCEMENT OF THE  
REGULATIONS WHILE NOT IMPINGING ON NAVIGATION. THE  
NEGOTIATING PROCESS OCCURRED MAINLY WITHIN THE INFORMAL  
WORKING GROUP OF THE WHOLE AND THROUGH CONSULTATIONS  
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CONDUCTED BY CHAIRMAN JOSE LOUIS VALLARTA (MEXICO).

AN IMPORTANT INITIAL DECISION WAS NOT TO REOPEN THE  
FIRST 15 ARTICLES OF THE GENEVA SINGLE NEGOTIATING TEXT  
WHICH WERE PREVIOUSLY NEGOTIATED. THESE COVER THE GENERAL  
OBLIGATIONS TO PREVENT POLLUTION, GLOBAL AND REGIONAL  
CO-OPERATION ON POLLUTION PROBLEMS, TECHNICAL ASSISTANCE,  
MONITORING, AND ENVIRONMENTAL ASSESSMENTS. A FEW CHANGES  
WERE MADE TO THESE TEXTS BASED ON EVENSEN GROUP INTER-  
SESSIONAL WORK. ARTICLE-BY-ARTICLE DISCUSSION THEN TOOK  
PLACE ON ARTICLES 16 THROUGH 19 AND 21 THROUGH 25 WITH  
FEW CHANGES BEING MADE TO THE GENEVA SNT. THESE  
ARTICLES PROVIDE FOR THE ESTABLISHMENT AND ENFORCEMENT  
OF REGULATIONS ON LAND-BASED POLLUTION, CONTINENTAL  
SHELF POLLUTION AND OCEAN DUMPING AND INDICATE THAT  
POLLUTION FROM DEEP SEABED EXPLORATION AND EXPLOITATION  
OF RESOURCES WILL BE HANDLED IN COMMITTEE I. ON THE  
VESSEL-SOURCE POLLUTION ARTICLES (20, 26-39), THE DIS-  
CUSSION TOOK PLACE ON AN ISSUE-BY-ISSUE APPROACH.  
AFTER GENERAL DEBATE IN THE WORKING GROUP OF THE WHOLE  
REAL NEGOTIATION TOOK PLACE IN AN INFORMAL CONSULTING  
GROUP OPEN TO ALL COUNTRIES. THERE WAS MOVEMENT TOWARD  
COMPROMISE ON THE PART OF BOTH THE COASTAL AND MARITIME  
STATES. THE TENOR OF THE DISCUSSIONS PERMITTED AMB.  
YANKOV TO PRODUCE A NEW TEXT WHICH MAY BE VERY CLOSE TO  
A FINAL TREATY ON MOST ISSUES.

IN THE AREA OF VESSEL-SOURCE POLLUTION, THREE MAJOR  
ASPECTS WERE ADDRESSED: COASTAL STATE REGULATIONS IN  
THE ECONOMIC ZONE; ENFORCEMENT GENERALLY AGAINST VESSEL-  
SOURCE POLLUTION; AND COASTAL STATE RIGHTS IN THE  
TERRITORIAL SEA.

WITH RESPECT TO ECONOMIC ZONE REGULATIONS, MOST COUN-  
TRIES AGREE THAT THERE SHOULD BE ONLY GENERALLY APPLI-  
CABLE INTERNATIONAL REGULATIONS IN THE ECONOMIC ZONE,  
ALTHOUGH THERE WOULD BE SPECIAL AREAS, DEFINED BY  
CRITERIA IN THE TREATY, IN WHICH MORE STRICT

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INTERNATIONAL DISCHARGE REGULATIONS WOULD APPLY. IN GENERAL,  
THE CRITERIA AND REGULATION IN THESE  
SPECIAL AREAS WOULD BE THE SAME AS THOSE IN THE 1973  
IMCO CONVENTION. IN ADDITION, THE TEXT CONTAINS AN  
ARTICLE GIVING COASTAL STATES STANDARD-SETTING AND  
ENFORCEMENT RIGHTS IN ICE-COVERED AREAS WITHIN THE  
LIMITS OF THE ECONOMIC ZONE.

ON ENFORCEMENT OF INTERNATIONAL DISCHARGE REGULATIONS,  
AN ACCOMMODATION HAS BEEN GENERALLY SUPPORTED ALONG THE  
FOLLOWING LINES:

(A) STRICT FLAG STATE OBLIGATIONS TO TAKE EFFECTIVE  
ENFORCEMENT ACTION;

(B) A PORT STATE ENFORCEMENT RIGHT TO PROSECUTE  
VESSELS IN ITS PORT FOR INTERNATIONAL DISCHARGE REGU-  
LATION VIOLATIONS REGARDLESS OF WHERE THEY OCCUR;  
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(C) A COASTAL STATE RIGHT TO TAKE ENFORCEMENT ACTION IN THE ECONOMIC ZONE AGAINST FLAGRANT OR GROSS VIOLATIONS OF INTERNATIONAL DISCHARGE REGULATIONS CAUSING MAJOR DAMAGE OF THREAT OF DAMAGE TO COASTAL STATE INTERESTS;

(D) A FLAG STATE RIGHT TO PREEMPT PROSECUTIONS FOR VIOLATIONS BEYOND THE TERRITORIAL SEA BY OTHER STATES UNLESS THE FLAG STATE HAS DISREGARDED ITS ENFORCEMENT OBLIGATIONS OR THE VIOLATION HAS CAUSED MAJOR DAMAGE; AND

(E) A SERIES OF SAFEGUARDS INCLUDING RELEASE ON BOND OF VESSELS, LIABILITY FOR UNREASONABLE ENFORCEMENT, AND SOVEREIGN IMMUNITY.

WITH REGARD TO THE TERRITORIAL SEA, A MAJOR SPLIT REMAINS. THE OTHER MAJOR MARITIME POWERS (USSR, JAPAN, U.K. AND MOST WESTERN EUROPEANS) ARGUE THAT THE COASTAL STATE SHOULD NOT BE AUTHORIZED TO ESTABLISH CONSTRUCTION, DESIGN, EQUIPMENT OR MANNING REGULATIONS MORE STRICT THAN INTERNATIONAL REGULATIONS. MANY COASTAL STATES AND THE U.S. SUPPORT COMPLETE COASTAL STATE AUTHORITY SUBJECT ONLY TO THE RIGHT OF INNOCENT PASSAGE. THE U.S. VIEW IS ALREADY SET OUT IN DOMESTIC LEGISLATION IN THE PORTS AND WATERWAYS SAFETY ACT. THE THIRD COMMITTEE TEXT SUPPORTS THE U.S. VIEW WHILE THE SECOND COMMITTEE TEXT SUPPORTS THE MARITIME VIEWPOINT, THIS REQUIRING LATER RESOLUTION OF THE ISSUE.

THE MAJOR ISSUE REMAINING TO BE RESOLVED IS CO-ORDINATION OF THE COMMITTEES TWO AND THREE TEXTS ON TERRITORIAL SEA JURISDICTION. THE COASTAL STATE RIGHTS TO SET MANNING, EQUIPMENT, DESIGN AND CONSTRUCTION STANDARDS WITHIN THE TERRITORIAL SEA WILL NOT SEE FINAL RESOLUTION UNTIL SUCH CO-ORDINATION HAS TAKEN PLACE.

#### B. MARINE SCIENTIFIC RESEARCH

COMMITTEE III COMPLETED THE FIRST ARTICLE-BY-ARTICLE READING OF THE GENEVA SNT ON MARINE SCIENTIFIC RESEARCH (MSR) AND ON TECHNOLOGY TRANSFER. THE CHAIRMAN OF THE INFORMAL WORKING GROUP, CORNEL METTERNICH OF THE FRG, UNCLASSIFIED

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REPEATEDLY STRESSED THAT THE PURPOSE OF THE SESSIONS WAS TO OBTAIN REACTIONS TO THE SNT IN ORDER TO AID CHAIRMAN YANKOV IN REDRAFTING THE TEXT.

WITH THESE GROUND RULES, THE MAIN FOCUS OF THE MARINE SCIENTIFIC RESEARCH DISCUSSIONS WAS CHAPTER III OF

THE GENEVA TEXT DEALING WITH RESEARCH IN THE ECONOMIC ZONE AND ON THE CONTINENTAL SHELF. THE U.S. APPROACH WAS THAT COASTAL STATE INTERESTS IN THE ECONOMIC ZONE SHOULD BE PROTECTED THROUGH A SERIES OF AGREED OBLIGATIONS UPON THE RESEARCHER. MANY DEVELOPED COUNTRIES SOUGHT CONSENT FOR ALL RESEARCH IN THE ECONOMIC ZONE. THE GENEVA TEXT SET FORTH A MIXED REGIME IN THE ECONOMIC ZONE REQUIRING CONSENT FOR RESOURCE-ORIENTED RESEARCH AND AN OBLIGATIONS REGIME FOR RESEARCH NOT ORIENTED TOWARD RESOURCES. THIS DISTINCTION BETWEEN CATEGORIES OF RESEARCH COME UNDER ATTACK BY THIRYT-SIX DEVELOPING COUNTRIES WHO CLAIMED SUCH A DISTINCTION WAS IMPRACTICAL AND THAT CONSENT SHOULD APPLY TO ALL RESEARCH ACTIVITIES IN THE ECONOMIC ZONE. MOST OTHER COUNTRIES DEFENDED THE DISTINCTION CONCEPT AS THE ONLY PRACTICAL BASIS FOR A COMPROMISE SETTLEMENT ON THE QUESTION OF MSR. IN AN ATTEMPT TO FIND A REASONABLE ACCOMMODATION THE SPEECH BY SECRETARY KISSINGER STATED A WILLINGNESS TO ACCEPT A REASONABLE DISTINCTION APPROACH, SUBJECT TO COMPULSORY DISPUTE SETTLEMENT.

AN IMPORTANT ELEMENT OF A REGIME FOR MSR BASED ON A DISTINCTION BETWEEN RESOURCE AND NON-RESOURCE ORIENTED RESEARCH IS THE QUESTION OF WHO DECIDES THE ORIENTATION OF THE RESEARCH. MEXICO CONTINUED TO SEEK COMPULSORY CONCILIATION WITH THE ULTIMATE RIGHT IN THE COASTAL STATE TO DECIDE THE ISSUE. MANY DEVELOPING STATES WHO HAD ATTACKED THE PROPOSAL TO DISTINGUISH BETWEEN RESOURCE AND NON-RESOURCE ORIENTED RESEARCH INDICATED THAT THE MEXICAN APPROACH WOULD MAKE THIS DISTINCTION CONCEPT MORE ACCEPTABLE. MANY OF THE SUPPORTERS OF THE DISTINCTION CONCEPT, ON THE OTHER HAND, SAID IT WAS CRUCIAL TO HAVE DISPUTED QUESTIONS ON THE NATURE OF THE RESEARCH SUBJECT TO BINDING THIRD PARTY SETTLEMENT. THERE WAS NO CLEAR RESOLUTION OF THE ISSUE IN THE INFORMAL MEETINGS

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OF THE COMMITTEE.

METTERNICH, IN HIS REPORT TO CHAIRMAN YANKOV, REFERRED TO INFORMAL NEGOTIATIONS THAT HAD OCCURRED DURING THE SESSION AND OFFERED THE FOLLOWING PERSONAL CONCLUSION:

(A) A COMPROMISE WILL NOT BE REACHED ON A TEXT WHICH REQUIRED CONSENT IN ALL CASES NOR IN A TEXT WHERE CONSENT IS NEVER REQUIRED. A MIXED REGIME SUBJECTING SOME RESEARCH ACTIVITIES TO CONSENT AND SOME TO AN OBLIGATION REGIME APPEARED TO BE THE ONLY VIABLE BASIS FOR COMPROMISE.

(B) WHILE THERE WAS NO AGREEMENT AS TO THE COMPLETE LIST, IT APPEARED THAT AT LEAST THE FOLLOWING SHOULD REQUIRE CONSENT: RESOURCE-ORIENTED RESEARCH, ALTHOUGH

THERE WAS NO AGREEMENT AS TO THE PROPER TERMINOLOGY TO DESCRIBE THIS FORM OF RESEARCH; DRILLING OR THE USE OF EXPLOSIVES; AND UTILIZATION OF STRUCTURES REFERRED TO IN ARTICLE 48 OF PART II.

(C) CENTRAL TO THE REGIME WAS THE QUESTION OF DISPUTE SETTLEMENT WITH NO COMPROMISE ON THIS ISSUE READILY APPARENT.

THE REVISED SNT, HOWEVER, REFLECTS A DIFFERENT APPROACH FROM THOSE DISCUSSED IN THE NEGOTIATION. IT REQUIRES CONSENT FOR ALL SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE BUT PROVIDES THAT CONSENT SHALL NOT BE WITHHELD UNLESS IT IS RESOURCE ORIENTED, INVOLVES DRILLING AND THE USE OF EXPLOSIVES, OR THE UTILIZATION OF ARTIFICIAL ISLANDS OR INSTALLATIONS SUBJECT TO COASTAL STATE JURISDICTION: THE NEW TEXT ALSO PROVIDES THAT DISPUTES REGARDING RESEARCH WILL FIRST BE REFERRED TO EXPERTS TO AID THE PARTIES IN REACHING AGREEMENT BUT IF THOSE EFFORTS ARE NOT SUCCESSFUL IT WILL BE REFERRED TO THE BINDING DISPUTE SETTLEMENT PROCEDURES SET FORTH IN PART IV.

### 3. TRASFER OF TECHNOLOGY

THE DISCUSSION ON TRANSFER OF TECHNOLOGY WAS LENGTHY BUT BASICALLY INCONCLUSIVE. SEVERAL ATTEMPTS WERE MADE

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TO INSURE THAT THE TEXT REFLECTED THE VIEW THAT TRANSFER OF TECHNOLOGY WAS AN OBLIGATION OF DEVELOPED STATES NOT SUBJECT TO NORMAL ECONOMIC PRINCIPLES. CONTRASTED TO THIS VIEW WAS THE APPROACH THAT ALL TRANSFER OF TECHNOLOGY INVOLVING TECHNOLOGY IN THE COMMERCIAL SECTOR MUST PROTECT THE INTERESTS OF BOTH THE RECIPIENT AND THE SUPPLIER OF TECHNOLOGY.

#### V. SETTLEMENT OF DISPUTES

##### A. GENERAL OBJECTIVES

EFFECTIVE PROVISIONS FOR THE BINDING SETTLEMENT OF DISPUTES ARISING FROM THE INTERPRETATION OR APPLICATION OF THE LOS CONVENTION ARE AN ESSENTIAL PART OF A NEGOTIATED PACKAGE. WITHOUT A PROVISION FOR COMPULSORY UNCLASSIFIED

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SETTLEMENT OF DISPUTES, THE SUBSTANTIVE PROVISIONS OF THE CONVENTION WOULD BE SUBJECT TO UNILATERAL INTERPRETATION AND THE DELICATE BALANCE OF RIGHTS AND DUTIES ACHIEVED IN A CONVENTION WOULD BE QUICKLY UPSET. SECRETARY KISSINGER EMPHASIZED THE IMPORTANCE OF THIS IN HIS APRIL 8 SPEECH.

##### B. BACKGROUND

AN INFORMAL WORKING GROUP ON SETTLEMENT OF DISPUTES WAS ORGANIZED AT CARACAS, AND AT THE END OF THE 1975 GENEVA SESSION THIS GROUP SUBMITTED A TEXT TO THE PRESIDENT OF THE CONFERENCE. USING THAT TEXT AND RESOLVING SOME OF THE ISSUES IT LEFT OPEN, THE PRESIDENT PREPARED AND CIRCULATED A SINGLE NEGOTIATING TEXT ON DISPUTE SETTLEMENT IN JULY 1975.

IN AN EFFORT TO BLEND TOGETHER THE CONFLICTING APPROACHES WHICH WERE DISCUSSED AT CARACAS AND GENEVA--ONE WHICH WOULD PROVIDE COMPULSORY DISPUTE SETTLEMENT (CDS) ONLY FOR CERTAIN DISPUTES; THE OTHER WHICH WOULD APPLY CDS TO ALL DISPUTES--PRESIDENT AMERASINGHE P O-VIDED IN HIS FIRST TEXT FOR A NEW LAW OF THE SEA TRIBUNAL TO RESOLVE DISPUTES INVOLVING THE INTERPRETATION OR APPLICATION OF THE CONVENTION (UNLESS THE PARTIES TO THE DISPUTE AGREED TO ARBITRATION OR THE INTERNATIONAL COURT OF JUSTICE); HE ALSO PROVIDED FOR SPECIAL PROCEDURES IN THE AREA OF FISHERIES, POLLUTION, AND SCIENTIFIC RESEARCH DISPUTES AND FOR VARIOUS EXCEPTIONS TO CDS, INCLUDING ONE WHICH DEALS WITH THE PIVOTAL QUESTION OF DISPUTE SETTLEMENT IN THE ECONOMIC ZONE.

#### C. PLENARY DEBATE

DISPUTE SETTLEMENT WAS TAKEN UP IN A PLENARY MEETING OF THE CONFERENCE FOR THE FIRST TIME DURING THE FOURTH SESSION. IN SIX DAYS OF DEBATE, A WIDE RANGE OF VIEWS WERE EXPRESSED BY SEVENTY-TWO SPEAKERS. EACH SPEAKER ACKNOWLEDGED THE NEED FOR A DISPUTE SETTLEMENT SYSTEM, BUT DISCUSSION OF THE SCOPE AND COMPETENCE OF THE UNCLASSIFIED

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SYSTEM DISCLOSED WIDELY DIVERGENT VIEWPOINTS ON BASIC DETAILS. SOME STATES ADVOCATED A COMPREHENSIVE SYSTEM THAT WOULD APPLY TO ALL DISPUTES ARISING OUT OF THE INTERPRETATION AND APPLICATION OF THE CONVENTION. SOME STATES SUPPORTED A COMPREHENSIVE SYSTEM WITH A PROVISION FOR LIMITED AND CAREFULLY DEFINED EXCEPTIONS FROM THE JURISDICTION OF THE SYSTEM. AND SOME STATES PROPOSED THAT CDS SHOULD BE TOTALLY EXCLUDED FROM THE ECONOMIC ZONE, ALTHOUGH MANY OF THOSE STATES ALSO EXPRESSLY ACKNOWLEDGED THAT NAVIGATION AND OVERFLIGHT DISPUTES IN THE ZONE SHOULD BE SUBJECT TO CDS.

MANY DELEGATIONS RECOGNIZED THAT DISPUTES ARISING OUT OF DEEP SEABED MINING ACTIVITIES, PARTICULARLY DISPUTES OVER CONTRACT MATTERS, WOULD HAVE UNIQUE FEATURES, AND ACCORDINGLY SUPPORTED SPECIALIZED PROCEDURES FOR SUCH DISPUTES. SOME FAVORED A COMPLETELY INDEPENDENT SEABED TRIBUNAL WHICH WOULD BE AN ORGAN OF THE SEABED AUTHORITY WITH AUTHORITY TO MAKE BINDING, FINAL DECISIONS REGARDING ALL DISPUTES ARISING OUT OF THE ACTIVITIES IN THE AREA PURSUANT TO PART I OF THE CONVENTION. OTHERS SUGGESTED THAT AN APPELATE RELATIONSHIP SHOULD BE ESTABLISHED BETWEEN THE SEABED TRIBUNAL AND THE LAW OF THE SEA TRIBUNAL.

SPEAKERS IN THE PLENARY ALSO DISCUSSED THE STRUCTURE OF THE DISPUTE SETTLEMENT SYSTEM. SOME STATES ADVOCATED ARBITRATION AS THE SOLE MODE OF SETTLING DISPUTES; OTHERS ADVOCATED USE OF THE INTERNATIONAL COURT OF JUSTICE, AND OTHERS SUPPORTED THE CREATION OF A NEW LAW OF THE SEA TRIBUNAL. (ALTHOUGH SOME DELEGATIONS OPPOSED ANY NEW TRIBUNAL).

SOME STATES ADVOCATED SPECIALIZED PROCEDURES TO HANDLE DISPUTES RELATED TO FISHING, NAVIGATION, AND RESEARCH; OTHER STATES ADVOCATED A SYSTEM WITH GENERAL JURISDICTION FOR HANDLING ALL DISPUTES. IN THE DISCUSSION OF THE TYPE OF FORUM OR FORA TO BE USED, THERE WAS SUBSTANTIAL SUPPORT FOR A PROVISION THE SO-CALLED QTE MONTREUX FORMULA UNQTE THAT WOULD GIVE A CONTRACTING PARTY A CHOICE AMONG THREE TRIBUNALS (AN ARBITRAL TRIBUNAL, THE LAW OF THE SEA TRIBUNAL, OR THE INTERNATIONAL COURT OF JUSTICE). A PARTY'S DECLARATION AT UNCLASSIFIED

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THE TIME OF RATIFICATION WOULD DETERMINE THE FORUM BEFORE WHICH THAT PARTY COULD BE BROUGHT BY A CLAIMANT IN A DISPUTE.

AT THE CLOSE OF THE PLENARY DEBATE PRESIDENT AMERASINGHE OBTAINED APPROVAL FOR HIS PROPOSAL TO PRODUCE A REVISED TEXT BASED ON THE REMARKS IN PLENARY AND ANY SUGGESTIONS SUBSEQUENTLY SUBMITTED INFORMALLY TO HIM.

#### D. THE BASIC ISSUES

IN THE DISPUTE SETTLEMENT SECTION OF THE CONVENTION, THE QUESTION OF APPLICATION OF COMPULSORY THIRD-PARTY DISPUTE SETTLEMENT IN THE ECONOMIC ZONE IS THE MOST DIFFICULT AND COMPLEX ISSUE. STATES OPPOSED TO EXCLUDING CDS FROM THE ZONE CONTEND THAT THE CONVENTION SYSTEM MUST TAKE ACCOUNT OF BOTH COASTAL AND OTHER STATES RIGHTS IN THE ZONE. THE SUCCESS OF THE CONFERENCE WILL DEPEND ON DESIGNING A PROVISION THAT WILL ACCOMMODATE BOTH COASTAL STATE INTEREST IN RESOURCE MANAGEMENT DISCRETION AND THE MAJOR RIGHTS AND INTERESTS OF OTHER STATES IN THE ECONOMIC ZONE.

#### E. GROUP OF 77

THE GROUP OF 77 UNDERTOOK A SERIOUS AND DETAILED STUDY OF DISPUTE SETTLEMENT FOR THE FIRST TIME DURING THIS SESSION. A TWELVE MEMBER "CONTACT GROUP" CONDUCTED EXTENSIVE DISCUSSION AND DEBATE OVER A PERIOD OF SEVERAL WEEKS. A POSITION PAPER WAS PRODUCED BY THIS CONTACT GROUP FOR THE GROUP OF 77.

F. REVISED SNT

THE FUNDAMENTAL QUESTION OF PROTECTING THE RIGHTS OF COASTAL STATES AND THE RIGHTS OF OTHER STATES IN THE ECONOMIC ZONE IS TREATED IN ARTICLE 18. SUBJECT TO CERTAIN EXCEPTIONS, INCLUDING INTERFERENCE WITH NAVIGATION OVER-FLIGHT, THE NEW ARTICLE 18 EXCLUDES FROM THE CONVENTION SYSTEM DISPUTES RELATED TO THE EXERCISE OF QTE SOVEREIGN RIGHTS, EXCLUSIVE RIGHTS OR EXCLUSIVE JURISDICTION OF A COASTAL STATE UNQTE. IT ALSO INCLUDES A MODIFIED VERSION OF THE UNCLASSIFIED

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QTE MONTREUX FORMULA UNQTE REGARDING PROCEDURES.

THE NEW TEXT MUST BE CAREFULLY STUDIED. IF THE ECONOMIC ZONE IS NOT TO BECOME THE FUNCTIONAL EQUIVALENT OF A TERRITORIAL SEA, THE DISPUTE SETTLEMENT SYSTEM MUST PROVIDE ADEQUATE PROTECTION FOR THE RIGHTS OF BOTH COASTAL AND OTHER STATES.  
SHERER

NOTE BY OCT: NOT POUCHED.

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